

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

ORDER

1.S.B. Civil Writ Petition No.2147/1998
Vijay Solvex Ltd. Vs. The State of Raj. &
Ors.

2.S.B. Civil Writ Petition No.5954/97
Vijay Solvex Ltd. Vs. The State of Raj. &
Ors.

Date of Order :: 21st September, 2007

Hon'ble Mr. Justice Mohammad Rafiq

Mr. Anant Kasliwal with
Mr. Vaibhav Kasliwal) for the
petitioner.

Mr. B.P. Agarwal, Advocate General with
Mr. R.P. Agarwal for the respondents.

These two writ petitions have
been filed by the petitioners claiming
the benefit of exemption from payment of
octroi duty on plant and machinery parts
as also on the raw material. The prayer
that has been specifically made in the

writ petition i.e. S.B Civil Writ Petition No.5954/1997 is to the effect that the order dated 17.10.1997 by which the Deputy Director (Industries) has conveyed rejection of the application submitted by the petitioner of claiming exemption from payment of octroi on the basis of decision of State Level Octroi Exemption Committee dated 10/10/1997 be quashed and set aside and the respondents be directed to grant exemption to the petitioner from payment of octroi duty on such raw material and be further directed to refund the octroi duty charged from the petitioner. In S.B. Civil Writ Petition No.2147/1998, the petitioner seeks the mandamus against the respondents requiring them to grant him exemption from payment of octroi duty on

plant and machinery and parts thereof and other materials imported from outside Alwar and further requiring the respondents to refund the amount of octroi duty already charged together with the interest @ 18% per annum.

I shall first deal with the facts of the writ petition no.5954/97. The petitioner has installed a "Vanaspati Ghee" plant. The Industrial Development Bank of India advanced loan of Rs.300 lacs to the petitioner for installation of the said plant. The plant started commercial production on 26.3.1995. The Government of Rajasthan vide notification dated 6.10.1995 extended the benefit of exemption from payment of octroi on imported raw material to such of the new / independent industries installed

between 1st April 1995 to 31th March, 1997. Petitioner also applied for grant of exemption from 1.10.1997 to 30.9.1998 on the premise that the Vanaspati plant was established by it was entitled to exemption from payment of octroi, as it has to be taken as a case of expansion and therefore more particularly when the petitioner had made fresh investment in the establishment of plant, which is completely independent of its existing production process of solvent extraction. The Dy. Director (Industries) who visited the plant in question on 27.7.1995 in his report dated 17.10.1997 submitted before the State Level Committee verified the fact that the Vanaspati plant set up by the petitioner is in the nature of an independent unit, yet the application of

the petitioner for claiming benefit / exemption was rejected by order dated 17.10.1997.

In so far as the S.B. Civil Writ Petition No.2147/98 is concerned, the claim of the petitioner in that is based on interpretation of the notification dated 3rd July, 1990 wherein provision for grant of exemption from payment of octroi on imported plant and machinery has been extended to newly set up industries as also in the case of industries which are making expansion of existing industrial establishment between 1.4.1995 to 31.3.1997. It is contended that the petitioner submitted application for grant of exemption on 11.10.1994 to District Industries Centre, Alwar which vide its letter dated 25.11.1994

forwarded the same to Industries Directorate who by its order dated 10.1.1995 declined to give the benefit of exemption to the petitioner on the ground that the exemption from payment of octroi duty is granted to the newly set up industries or such industries which are seeking expansion but not those which are going in for diversification. The petitioner submitted its representation to the Dy. Director (Industries) on 12.1.1995 clarifying that its factory was new and independent vegetable plant wherein no old machineries have been used and therefore it was entitled to exemption from payment of octroi duty. The petitioner also furnished the said information required by Dy. Secretary (Industries) by letter dated 10.3.1995.

The District Industries Centre, Alwar in his letter dated 20.3.1995 forwarded the demanded information to the Directorate. The Dy. Director (Industries) by letter dated 23.12.1995 conveyed the exemption of the claim of the petitioner from payment of octroi duty. In the absence of the rejection certificate, the petitioner has deposited a sum of Rs.4,52,737.15 as octroi for plant and machinery. The State Level Committee however held that the industrial unit of the petitioner falls broadly within the purview of expansion cum diversification because of launching of the product by the same company. It is in this context that the petitioner in the second writ petition prays for aforequoted reliefs.

I have heard Shri Anant Kasliwal, the

learned counsel for the petitioner and Shri B.P. Agarwal, the learned Advocate General assisted by Shri R.P. Agarwal, advocate for the State.

Shri Anant Kasliwal, learned counsel for the petitioner argued that though originally the unit of the petitioner was set up with Solvent Extraction Plant alongwith Oil Refinery, but subsequently, it obtained some extra land from the Government and set up a vegetable plant also for manufacturing hydro generated oil (vegetable ghee). Shri Anant Kasliwal therefore argued that the present one should not have been taken as a case of expansion and the benefit of exemption from octroi duty should have been allowed to the petitioner. He argued that the State Level Committee was not justified

in treating it as a case of expansion cum diversification. Shri Anant Kasliwal has also referred to the Illustrated Oxford Dictionary wherein a variety of meanings of the word "diversify" & "expansion" has been given.

He argued that even if what the District Industries Centre has held is taken as correct that the present case would fall in the category of expansion cum diversification, this would non-the-less qualify the requirement of Government notification dated 3rd July, 1990 according to which a newly set up industry was entitled to receive exemption from payment of raw material used by it for a period of 5 years started from the date of commencement of the production as also for imported plant

and machinery in the case of expansion of an existing industrial unit. Shri Kasliwal relied on the judgment of the Supreme Court in the case of Municipal Commissioner, Chinchwad New Township Municipal Council Vs. Century Enka Ltd., (1995) 6 SCC 152 to canvass that even when an undertaking is set up to effect substantial expansion of existing unit, it would meet the requirement of setting up new industry. Regardless of the fact whether it is considered as diversification or expansion, it should still be granted exemption being a new industrial unit. Shri Kasliwal also referred to division bench judgment of Gujarat High Court in Pranav Raj Paper Mills & Anr. Vs. State of Gujarat in Special Civil Application No.9432/1997

decided on 9.12.1998 to argue that for the purpose of eligibility for exemption, expansion or diversification of industry would amount to set up new industry entitling the petitioner to the benefit of exemption. He also relied on the judgment of Supreme Court in the case of Commissioner of Central Excise, Shillong Vs. North-Eastern Tobacco Co. Ltd., (2003)1 SCC 161.

On the other hand, Shri B.P. Agarwal, the learned Advocate General opposed the writ petition and argued that an altogether a different argument was made by the petitioner before the State Level Committee that setting up of a new vegetable plant should be taken as a case of diversification and that the State Government should provide him exemption

from octroi duty as it has made fresh investment in plant which was completely independent of the existing production process. It was in the context of this argument that the State Level Committee decided that the case of the petitioner was covered under the definition of diversification and was not the case of expansion-cum-diversification. It was argued that the committee has rightly held that no octroi exemption both on the import of the plant and machinery and raw material by industrial unit for no octroi exemption or raw material is admissible to industrial unit going in for expansion or diversification. In either of the case therefore the petitioner would not be entitled to exemption. It was argued that since the petitioner was not eligible for

under notification dated 6.10.1995 and 25.7.1997 for claiming exemption from payment of octroi for import of raw materials to be consumed under its diversified industrial unit, the Committee rightly reviewed the earlier orders dated 9.10.1995, 9.10.1996 and 21.5.1997. It was argued that either extension or diversification by itself does not tantamount to setting up of a new industrial unit. Shri Agrawal argued that the judgments cited by on behalf of the petitioner are not applicable on the facts of the case inasmuch as the interpretation taken by the courts in those judgments was based on the relevant provisions cited therein. Everything in the present case would turn out on the interpretation of the language used in

the exemption notification in the present case according to which the petitioner is not entitled to any benefit. He therefore prays that the writ petitions be dismissed.

Shri Anant Kasliwal, the learned counsel for the petitioner rejoined and argued that the State Level Committee in any case could not have reviewed and recalled its earlier orders dated 9.10.1995, 9.10.1996 and 21.5.1997 so as to withdraw the benefit which had already been availed by the petitioner.

I have given my thoughtful consideration to the arguments advanced by learned counsel for the parties and perused the material on record.

What the petitioner is claiming is essentially based on the fact that either

the industrial unit set up by it should be considered as a new industrial unit or a case of expansion. In any case, the petitioner unit having been set up in 1995 and started production w.e.f. 26th March, 1995 was not covered by notification dated 6.10.1995 according to which benefit of exemption was available to the newly set up industrial units between 1st April, 1995 to 31st March, 1997. But the argument of the petitioner is that since the fresh allotment of land was made in favour of the petitioner, substantial investments were made and since there was a new production of vegetable ghee, such industry has to be accepted as a new industry by mere reason of the fact that an existing industry was expanded / diversified and that whether

it be taken a case of expansion or diversification, it would be none the less the case of setting up of a new industrial unit. The learned counsel has placed reliance on the judgment of Hon'ble Supreme Court in Century Enka Ltd., supra, and division bench judgment of Gujarat High Court in Pranav Raj Paper Mills & Anr., supra. In the case before the Hon'ble Supreme Court, although the issue was with regard to exemption from octroi to new industrial undertaking, but from perusal of the judgment it is evident that the relevant resolution reproduced therein also had the provision defining as to what would be meant by a new industry. Now when I come to the judgment of division bench of Gujarat High Court it is noticed that in that

case too, not only the expansion but diversification were both defined under the relevant provisions of the incentive scheme. On consideration thereof the, division bench held that admissible exemption in the case of expansion and diversification has an internal link with the original project and they do not apply to independent industry. While expansion is considered to be one which increases in the value of fixed assets of capital investment coupled with increase with production, diversification means manufacturing of new product by the specified manufacturer. In the present case however the meaning of the word "expansion" has not been defined in the subject notification. The word which has not been defined in the specific

notification has therefore to be interpreted on the basis of common parlance meaning and expansion therefore has to be understood as the expansion of the existing industrial unit with the increase of the production of the same item which the original unit was manufacturing. The dictionary meaning although may be of some guidance but the word used in the given statute / notification has to take its colour from the context in which it is used. The dictionary meaning therefore cannot be the sole guidance for deciding as to what would be meant by a particular word used in a particular statute or a notification. This is because in the dictionary one word may be assigned numerous meanings but which of the

meaning would fit in the scheme of the given legislation / notification would depend upon the setting and the context in which that word is used.

In the present case, it was not the argument of the petitioner itself before the State Level Committee that this was a case of expansion. In fact, what was contended by the petitioner before the State Level Committee was that it was a case of diversification and therefore the said committee in essence in that context took it to be a case of diversification and in its proceedings mostly used the expression "expansion" cum "diversification". In my view in spite of that expression having been used by the State Level Committee, so far as validity of the order impugned is concerned, the

same can be decided on the facts available on record which are not denied and indeed cannot be denied that the petitioner originally was having the industrial unit for solvent extraction as end product which was used as raw material in manufacturing of vegetable ghee. Applying the principal of common parlance meaning therefore when the existing industrial unit of the petitioner started with the addition of new plant and machinery manufacturing another product in line of its original product, it would essentially be a case of diversification and not that of expansion. In any case, however, the argument of the petitioner that simply because the unit was diversified the industrial unit should be taken as new

industrial unit for that reason alone cannot be accepted. The judgment of Supreme Court in North Eastern Tobacco Co. Ltd., supra, cited by the petitioner turned out on its own facts. It would be clear from the facts of that case that the factory concerned in that case was decided to be re-constructed at new location pursuant to disinvestment agreement. Earlier the unit was closed and thereafter the company set up another unit at a different place. The company applied for grant of license under the Industries (Development & Regulation) Act, 1951 with a further request that the license earlier granted for different location shall be used for new location. The company continued its industrial activity at the new location on the basis

of same industrial license granted for earlier location. It was in this context that the Court held that the company may not be denied the benefit of exemption as industrial unit at another location was a new unit within the scope of the exemption notification. In the present case the fact situation is entirely different as the original factory remains at its original place with certain plant and machinery added thereto by securing allotment of the adjoining existing land. All these factors do not make the unit concerned as a new industrial unit. It is trite law that unlike in the normal fiscal loss where benefit of double in the even of two possible construction of a provision, the benefit would to the assessee, in the case of provisions

contained in the exemption / concession notification, such benefit has to be go to the Revenue. The exemption notification shall have to be therefore construed strictly and if upon such construction thereof, a given case falls within the relevant category, the provision has to be given full play so as to grant the benefit admissible therein.

In view of what has been discussed above, I do not find any merit in either of the writ petitions. Both the writ petitions are therefore dismissed, however, with no order as to costs.

(Mohammad Rafiq), J.

RS/-